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Attorneys for Plaintiff
United States of America

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANGEL MIGUEL SANTIAGO-RIVERA,

Defendant.

CASE NO. 2:21-CR-179-TLN

STIPULATION REGARDING EXCLUDABLE
TIME PERIODS UNDER SPEEDY TRIAL ACT;
ORDER

DATE: November 18, 2021
TIME: 9:30 a.m.
COURT: Hon. Troy L. Nunley

By previous order, this matter was set for status on November 18, 2021. The case was reassigned on November 9, 2021, to United States District Judge Troy L. Nunley and all dates in the case were vacated. By this stipulation, the parties now request that the Court set a status conference for January 6, 2022, and to exclude time under the Court's General Orders, as well as under Local Code T4, for the reasons set forth below.

On April 17, 2020, this Court issued General Order 617, which suspends all jury trials in the Eastern District of California scheduled to commence before June 15, 2020, and allows district judges to continue all criminal matters to a date after June 1. This and previous General Orders were entered to address public health concerns related to COVID-19.

Although the General Orders address the district-wide health concern, the Supreme Court has emphasized that the Speedy Trial Act's end-of-justice provision "counteract[s] substantive openendedness with procedural strictness," "demand[ing] on-the-record findings" in a particular case.

1 *Zedner v. United States*, 547 U.S. 489, 509 (2006). “[W]ithout on-the-record findings, there can be no
 2 exclusion under” § 3161(h)(7)(A). *Id.* at 507. Moreover, any such failure cannot be harmless. *Id.* at
 3 509; *see also United States v. Ramirez-Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a
 4 judge ordering an ends-of-justice continuance must set forth explicit findings on the record “either orally
 5 or in writing”).

6 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both mandatory
 7 and inexcusable—General Orders 611, 612, and 617 require specific supplementation. Ends-of-justice
 8 continuances are excludable only if “the judge granted such continuance on the basis of his findings that
 9 the ends of justice served by taking such action outweigh the best interest of the public and the
 10 defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable unless
 11 “the court sets forth, in the record of the case, either orally or in writing, its reason or finding that the
 12 ends of justice served by the granting of such continuance outweigh the best interests of the public and
 13 the defendant in a speedy trial.” *Id.*

14 The General Orders exclude delay in the “ends of justice.” 18 U.S.C. § 3161(h)(7) (Local Code
 15 T4). Although the Speedy Trial Act does not directly address continuances stemming from pandemics,
 16 natural disasters, or other emergencies, this Court has discretion to order a continuance in such
 17 circumstances. For example, the Ninth Circuit affirmed a two-week ends-of-justice continuance
 18 following Mt. St. Helens’ eruption. *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court
 19 recognized that the eruption made it impossible for the trial to proceed. *Id.* at 767-68; *see also United*
 20 *States v. Correa*, 182 F. Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the
 21 September 11, 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a
 22 similar, albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

23 In light of the societal context created by the foregoing, this Court should consider the following
 24 case-specific facts in finding excludable delay appropriate in this particular case under the ends-of-
 25 justice exception, § 3161(h)(7) (Local Code T4).¹ If continued, this Court should designate a new date
 26 for the status conference. *United States v. Lewis*, 611 F.3d 1172, 1176 (9th Cir. 2010) (noting any

27
 28 ¹ The parties note that General Order 612 acknowledges that a district judge may make
 “additional findings to support the exclusion” at the judge’s discretion. General Order 612, ¶ 5 (E.D.
 Cal. March 18, 2020).

pretrial continuance must be “specifically limited in time”).

STIPULATION

1. By this stipulation, the defendants now move to continue the status conference in this matter to January 6, 2022, at 9:30 a.m., and to exclude time between the date of the Court’s order, below, and January 6, 2022, under Local Code T4 and this Court’s General Orders.

2. The parties agree and stipulate, and request that the Court find the following:

a) The discovery associated in this case includes investigative reports, photographs, physical narcotics evidence, and firearms evidence. A substantial portion of this discovery has been produced directly to counsel and the government will make available for inspection and copying any other discovery that the defense wishes to review. The government also anticipates producing additional photographs in this case.

b) Counsel for defendant desires additional time to review the charges and discovery, conduct investigation, and consult with her client regarding potential defenses in this matter.

c) Counsel for defendant believes that failure to grant the above-requested continuance would deny her the reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

d) The government does not object to the continuance.

e) Based on the above-stated findings, the ends of justice served by continuing the case as requested outweigh the interest of the public and the defendant in a trial within the original date prescribed by the Speedy Trial Act.

f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et seq., within which trial must commence, the time period between the date of this Court’s order, below, and January 6, 2022, inclusive, is deemed excludable pursuant to the Court’s General Orders, in the interest of public health and safety, and pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4] because it results from a continuance granted by the Court at defendants’ request on the basis of the Court’s finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.

3. Nothing in this stipulation and order shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods are excludable from the period within which a trial must commence.

IT IS SO STIPULATED.

Dated: November 29, 2021

PHILLIP A. TALBERT
Acting United States Attorney

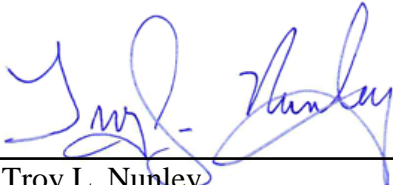
/s/ JAMES R. CONOLLY
JAMES R. CONOLLY
Assistant United States Attorney

Dated: November 29, 2021

/s/ NOA OREN
NOA OREN
Assistant Federal Defender
Counsel for Defendant
ANGEL MIGUEL SANTIAGO-RIVERA

ORDER

IT IS SO FOUND AND ORDERED this 29th day of November, 2021.


Troy L. Nunley
United States District Judge